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Defendants.

OPINION AND ORDER

BACKGROUND

On June 19, 2007, the thirtieth day after service of the complaint, Defendants' counsel sent removal notices to the federal and state courts via a runner service, Hawkins and E-Z Messenger. (Doc. 10 at 2). The state court removal notice was filed that day. Id. When the runner, Russell Box, attempted to file the notice of removal at the federal courthouse, the clerk of court rejected the removal notice because it did not comply with the local rule requiring removal notices to be filed electronically. Id.

1 Local Rule of Civil Procedure 5.5(a) authorizes the Clerk of Court to develop, publish,
2 and implement an administrative manual governing electronic case filing. This manual is
3 available online on the Court's website at

4 [http://www.azd.uscourts.gov/azd/cm-ecf.nsf/files/\\$file/adm+manual.pdf](http://www.azd.uscourts.gov/azd/cm-ecf.nsf/files/$file/adm+manual.pdf) ("Manual").

5 According to the Manual, notices of removal must be filed electronically. (Manual at 8).

6 The runner did not notify Defendants' counsel that removal notices were required to
7 be filed electronically until the following day, June 20, 2007, on which Defendants' counsel
8 promptly filed a notice of removal electronically. (Doc. 10 at 2). The notice was, therefore,
9 filed on the thirty-first day after service of the complaint. Id.

10 Pursuant to 28 U.S.C. § 1447, Plaintiff timely filed a motion to remand to state court
11 on the grounds that Defendants filed their notice of removal beyond the thirty-day deadline
12 imposed by 23 U.S.C. § 1446(b). (Doc. 7 at 1).

13 ANALYSIS

14 Notice of removal is governed by 28 U.S.C. § 1446(b), which provides that "[t]he
15 notice of removal of a civil action or proceeding shall be filed within thirty days after the
16 receipt by the defendant" of the complaint (emphasis added). Defendants concede that their
17 notice of removal was one day late. They argue, however, that, because the thirty-day
18 requirement is not jurisdictional, the Court has the discretionary authority to excuse
19 Defendants from complying with the statutorily mandated deadline.

20 The Court need not address whether it has discretion to excuse the late filing because
21 the removal notice was constructively filed within the required thirty days. The Ninth Circuit
22 has held that "a complaint is filed when it is placed in the actual or constructive custody of
23 the clerk of the court, despite any subsequent rejection by the clerk of the pleading for non-
24 compliance with a provision of the local rules." United States v. Dae Rim Fishery Co., 794
25 F.2d 1392, 1395 (9th Cir. 1986); see also Ordonez v. Johnson, 254 F.3d 814, 816 (9th Cir.
26 2001); Smith v. Frank, 923 F.2d 139, 142 (9th Cir. 1991); Loya v. Desert sands Unified Sch.
27 Dist., 721 F.2d 279, 281 (9th Cir. 1983).

1 In Cintron v. Union Pac. R.R. Co., 813 F.2d 917 (9th Cir. 1987), counsel mailed his
2 complaint to the court for filing. Id. at 919. It reached the court within the statute of
3 limitations, but the clerk of court rejected it because it did not comply with the locals rules
4 or the filing fee statute, 28 U.S.C. § 1914. Id. By the time counsel received notice of the
5 rejection, the statute of limitations had expired. Id. Counsel promptly re-filed the complaint.
6 Id. The Ninth Circuit held that the complaint was constructively filed when it was delivered
7 to the clerk of court, and thus within the statute of limitations, even though it was rejected
8 for non-compliance with local rules and the filing-fee statute. Id. at 920-21.

9 The Court finds no reason to distinguish Cintron from the case here. First, while
10 Cintron addressed the constructive-filing of a complaint rather than a removal notice, the
11 Ninth Circuit has not drawn a distinction between complaints and other pleadings. As the
12 Cintron court noted, “[t]he consensus is that ‘*papers and pleadings including the original*
13 *complaint* are considered filed when they are placed in the possession of the clerk of the
14 court.’” Cintron, 813 F.2d at 920 (quoting C. Wright & A. Miller, Federal Practice and
15 Procedure § 1153 (1969) (emphasis added)). To this end, the Ninth Circuit has not limited
16 the constructive-filing doctrine to complaints, having applied it to appeal notices, United
17 States v. Preston, 352 F.2d 352, 353 n.1 (9th Cir. 1965), and to objections to magistrate’s
18 finding of facts and conclusions of law, Smith, 923 F.2d at 141-42.

19 Second, the constructive-filing doctrine does not extend the deadline for filing, but
20 rather treats as timely filed a document that otherwise would be barred by a filing deadline.
21 Therefore, it is irrelevant whether the Court has the discretionary authority to extend the
22 deadline for filing under Section 1446(b).

23 In this case, Defendants, through their agent, tried to file the removal notice within
24 Section 1446(b)’s deadline, but it was rejected for non-compliance with the local rule
25 mandating electronic filing. If the Court did not apply the constructive-filing doctrine to
26 removal notices, Defendants would be unable to fully pursue their rights not because of
27 failure to comply with the removal statute, but because of non-compliance with a local rule.
28

1 “Such an interpretation would give the local rule an impermissible jurisdictional character.”
2 Smith, 923 F.2d at 142.

3 By the time counsel received notice of the rejection, the deadline had passed. The
4 removal notice was promptly re-filed. As in Cintron, the removal notice was constructively
5 filed when it was delivered to the clerk of court despite its subsequent rejection for non-
6 compliance with a local rule, and therefore was filed within the statutory deadline.

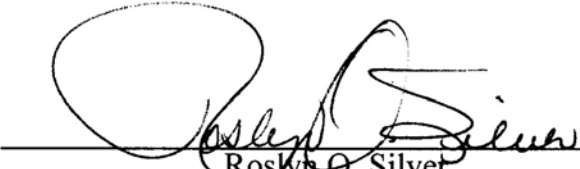
7 **CONCLUSION**

8 Because Defendants’ removal notice was constructively filed within the statutory
9 deadline and it asserted a proper basis for removal, remand to state court is improper.

10 Accordingly,

11 **IT IS ORDERED** Plaintiff’s Motion to Remand (Doc. 7) is **DENIED**.

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13 DATED this 24th day of August, 2007.

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19 Roslyn O. Silver
20 United States District Judge
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